

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

ARIZONA CORPORATION COMMISSION
OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

2001 JUN 12 A 11:01

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: JUNE 12, 2001
DOCKET NO: T-03933A-00-0714
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Phil Dion. The recommendation has been filed in the form of an Order on:

USA DIGITAL COMMUNICATIONS, INC.
(CC&N/RESELLER)

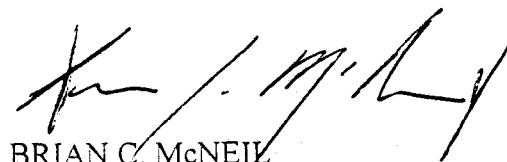
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 21, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 26, 2001 AND JUNE 27, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 CHAIRMAN

4 JIM IRVIN
5 COMMISSIONER

6 MARC SPITZER
7 COMMISSIONER

8 IN THE MATTER OF THE APPLICATION OF
9 USA DIGITAL COMMUNICATIONS, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE COMPETITIVE
12 RESOLD INTRASTATE
13 TELECOMMUNICATIONS SERVICES EXCEPT
14 LOCAL EXCHANGE SERVICE.

DOCKET NO. T-03933A-00-0714

DECISION NO. _____

ORDER

15 Open Meeting
16 June 26 and 27, 2001
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On September 19, 2000, USA Digital Communications, Inc. ("USA Digital" or
23 "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a
24 Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange
25 telecommunications services, except local exchange services, within the State of Arizona.

26 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
27 telecommunications providers ("resellers") were public service corporations subject to the
28 jurisdiction of the Commission.

29 3. Applicant is a C corporation domiciled in Nevada, authorized to do business in
30 Arizona since August of 2000.

31 4. Applicant is a switchless reseller, which purchases telecommunications services from
32 a variety of carriers.

33 5. On February 14, 2001, Applicant filed Affidavits of Publication indicating compliance
34 with the Commission's notice requirements.

1 6. On January 8, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
2 Report recommending approval of the application with some conditions.

3 7. In its Staff Report, Staff stated that USA Digital provided financial statements for the
4 period ended July 31, 2000. These financial statements list assets of \$301,395, total equity of
5 \$120,800, and a net income of \$70,800. Based on the foregoing, Staff believes that Applicant lacks
6 adequate financial resources to be allowed to charge customers any prepayments, advances, or
7 deposits without either establishing an escrow account or posting a surety bond to cover such
8 prepayments, advances, or deposits.

9 8. Staff reports that USA Digital does not charge its customers for any prepayments,
10 advances or deposits. If at some future date, the Applicant wants to charge customers any
11 prepayments, advances or deposits, it must file information with the Commission that demonstrates
12 the Applicant's financial viability. Upon receipt of such filing, Staff will review the information and
13 the Commission will make a determination concerning the Applicant's financial viability and
14 whether customer prepayments, advances or deposits should be allowed. Additionally, Staff believes
15 that if the Applicant experiences financial difficulty, there should be minimal impact to its customers.
16 Customers are able to dial another reseller or facilities-based provider to switch to another company.

17 9. Staff recommended approval of the application subject to the following conditions,
18 that:

19 (a) The Applicant should be ordered to comply with all Commission rules, orders,
20 and other requirements relevant to the provision of intrastate telecommunications
21 service;

22 (b) The Applicant should be ordered to maintain its accounts and records as
23 required by the Commission;

24 (c) The Applicant should be ordered to file with the Commission all financial and
25 other reports that the Commission may require, and in a form and at such times as the
26 Commission may designate;

27 (d) The Applicant should be ordered to maintain on file with the Commission all
28 current tariffs and rates, and any service standards that the Commission may require;

 (e) The Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a conflict

between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations of customers complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;

(h) The Applicant file its tariffs within 30 days of an Order in this matter, and in accordance with the Decision;

(i) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;

(j) The Applicant's intrastate interexchange service offerings should be classified as competitive;

(k) The Applicant's competitive services should be priced at the rates proposed by the Applicant in its most recently filed tariffs. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services; and

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

10. The Staff Report also stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

11. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set.

12. On August 29, 2000, the Arizona Court issued its Opinion in US WEST Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the Arizona Constitution requires the Commission to determine fair value rate bases for all public service corporations in Arizona prior to setting their rates and charges."

13. On October 26, 2000, the Commission filed a Petition for Review to the Supreme Court.

14. On February 16, 2001, the Commission's Petition was granted.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. Applicant's provision of resold interexchange telecommunications services is in the
8 public interest.

9 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
10 resold interexchange telecommunications services in Arizona.

11 6. Staff's recommendations in Findings of Fact No. 7, 8 and 9 are reasonable and should
12 be adopted.

ORDER

13
14 IT IS THEREFORE ORDERED that the application of USA Digital Communications, Inc.
15 for a Certificate of Convenience and Necessity for authority to provide competitive resold
16 interexchange telecommunications services, except local exchange services, is hereby granted, except
17 that USA Digital Communications, Inc. shall not be authorized to charge customers any prepayments,
18 advances, or deposits. In the future, if USA Digital Communications, Inc. desires to initiate such
19 charges, it must file information with the Commission that demonstrates USA Digital
20 Communications, Inc.'s financial viability. Staff shall review the information provided and file its
21 recommendation concerning financial viability and/or the necessity of obtaining a surety bond within
22 thirty (30) days of receipt of the financial information, for Commission approval.

23 IT IS FURTHER ORDERED that USA Digital Communications, Inc. shall file the following
24 fair value rate base ("FVRB") information within 18 months of the date that it first provides service.
25 The FVRB shall include a dollar amount representing the total revenue for the first twelve months of
26 telecommunications service provided to Arizona customers by USA Digital Communications, Inc.
27 following certification, adjusted to reflect the maximum rates USA Digital Communications, Inc.
28 requests in its tariff. This adjusted total revenue figure could be calculated as the number of units

1 sold for all services offered times the maximum charge per unit. USA Digital Communications, Inc.
 2 shall also file FVRB information detailing the total actual operating expenses for the first twelve
 3 months of telecommunications service provided to Arizona customers by USA Digital
 4 Communications, Inc. following certification. USA Digital Communications, Inc. shall also file
 5 FVRB information which includes a description and value of all assets, including plant, equipment,
 6 and office supplies, to be used to provide telecommunications service to Arizona customers for the
 7 first twelve months following USA Digital Communications, Inc.'s certification.

8 IT IS FURTHER ORDERED that USA Digital Communications, Inc. shall comply with
 9 Staff's recommendations as set forth in Findings of Fact No. 9.

10 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, USA
 11 Digital Communications, Inc. shall notify the Compliance Section of the Arizona Corporation
 12 Commission of the date that it will begin or has begun providing service to Arizona customers.

13 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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16
17 CHAIRMAN

COMMISSIONER

COMMISSIONER

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19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 20 Secretary of the Arizona Corporation Commission, have
 21 hereunto set my hand and caused the official seal of the
 22 Commission to be affixed at the Capitol, in the City of Phoenix,
 23 this ____ day of _____, 2001.

24 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

25 DISSENT _____

26 PD:dp

1 SERVICE LIST FOR:

USA DIGITAL COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03933A-00-0714

3
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